

change for these three notes of Hancock & Mann, were put in the market and negotiated as notes made on the day they bore date. They became legally operative instruments from that period, and the corresponding notes of Hancock & Mann must be regarded as coming into legal existence at the same time.

Since the former order of this court, a petition has been filed in the cause by Johns Hopkins and others, who allege that they hold sundry notes of Samuel Jones, endorsed by Dawson & Norwood, and which were given by the said Jones in exchange for the notes of Hancock & Mann, secured by the mortgages, and they claim by substitution, such dividends of the funds to be distributed, as would be payable to the trustees of Jones in case the said notes had been retired by him or his trustees. And the question most seriously discussed upon the present argument relates to their right of subrogation.

Before expressing, very briefly, my opinion upon this question, I will observe, that I think there is evidence upon which it may be fairly inferred that much of the paper of Jones now introduced in this cause, was given in exchange for the paper of Hancock & Mann, in the possession of his trustees. I think the testimony of Jacobson, the clerk of Jones, his memory being aided and refreshed by the entries in the ledger kept by him, and in which the original entries of these transactions were made, does establish the fact of such exchange with reference to a number of these notes, and I am of opinion, that the Auditor may, upon his proof, taken in connection with the ledger, ascertain with a reasonable degree of certainty which of the notes there entered were given in exchange for the notes of Hancock & Mann.

In the former opinion of the court it was said, that the trustees of Jones could not be permitted to receive dividends upon all the notes of Hancock & Mann, whether the counter notes given by Jones had or had not been paid, and before it was ascertained what dividends his estate would pay the holders of them.

The dividends to be paid to the trustees were to be measured by the dividends which they should pay to the holders of the